

1 Ben F. Pierce Gore (CA SBN 128515)
2 pgore@prattattorneys.com
3 PRATT & ASSOCIATES
4 1871 The Alameda, Suite 425
5 San Jose, California 95126
6 Telephone: (408) 429-6506
7 Facsimile: (408) 369-0752

8
9 Attorneys for Plaintiff

10 G. Gregg Webb (CA SBN 298787)
11 gwebb@shb.com
12 SHOOK, HARDY & BACON L.L.P.
13 One Montgomery, Suite 2700
14 San Francisco, California 94104-4505
15 Telephone: (415) 544-1900
16 Facsimile: (415) 391-0281

17 Attorneys for Defendants
18 JOHNSON & JOHNSON and JOHNSON &
19 JOHNSON CONSUMER INC.
20 formerly known as JOHNSON & JOHNSON
21 CONSUMER COMPANIES, INC.

12
13
14 UNITED STATES DISTRICT COURT
15 NORTHERN DISTRICT OF CALIFORNIA

16 DOLORES GOULD,

Case No. 4:16-cv-03838-HSG

17 Plaintiff,

18 vs.

19 JOHNSON & JOHNSON and JOHNSON &
20 JOHNSON CONSUMER COMPANIES, INC.,

**STIPULATED REQUEST FOR STAY
PENDING MDL TRANSFER DECISION;
DECLARATION OF G. GREGG WEBB;
AND ORDER**

21 Defendants.

22 Pursuant to Civil L.R. 6-2, Plaintiff Dolores Gould and Defendants Johnson & Johnson and
23 Johnson & Johnson Consumer Inc., formerly known as Johnson & Johnson Consumer Companies,
24 Inc., (together, the “Johnson & Johnson Defendants,” and collectively with Plaintiff, “the Parties”)
25 hereby stipulate and request that the Court enter the accompanying Proposed Order staying this
26 action for all purposes pending a decision by the Judicial Panel on Multidistrict Litigation (“JPML”)
27 on the previously filed Motion for Transfer seeking to centralize this case and all other federal
28 talcum powder cases filed nationally into a Multidistrict Litigation (“MDL”) proceeding (the “MDL

STIPULATED REQUEST FOR STAY PENDING MDL TRANSFER DECISION
CASE NO. 3:16-CV-04619-MMC

1 Motion"). As described below, the Johnson & Johnson Defendants did not oppose creation of an
 2 MDL. The JPML has set the MDL Motion for hearing on September 29, 2016, and the Parties
 3 anticipate that the JPML will issue its ruling shortly thereafter. Granting a brief stay of this action
 4 will ensure that the JPML has an opportunity to hear and rule upon the pending Motion for Transfer
 5 and will prevent potentially unnecessary and duplicative proceedings before this Court, thereby
 6 conserving both this Court and the Parties' time and resources.

7 In support of this Stipulation, the Parties state further as follows:

8 **The Pending MDL Motion for Transfer**

9 1. On July 15, 2016, plaintiff Tanashiska Lumas, whose case is pending in the Southern
 10 District of Illinois, filed a Motion for Transfer before the Judicial Panel on Multidistrict Litigation,
 11 requesting creation of an MDL proceeding to centralize eleven talcum powder cases filed in federal
 12 court, including this case. (*See In re Johnson & Johnson Talcum Powder Marketing, Sales Practices*
 13 *and Products Liability Litigation*, MDL No. 2738 (MDL Dkt. # 1).) There are presently at least 38
 14 individual actions pending in federal courts across the country in which Plaintiffs allege that perineal
 15 use of cosmetic talc products manufactured and marketed by Defendant Johnson & Johnson
 16 Consumer Inc. caused them to suffer ovarian cancer. In responding to the MDL Motion, the
 17 Johnson & Johnson Defendants did not oppose the creation of a multidistrict litigation proceeding
 18 for this action and other included actions pending nationwide. (*See* MDL Dkt. # 38.) The JPML set
 19 the hearing on the MDL Motion for its next Hearing Session on September 29, 2016, in Washington,
 20 D.C., and a ruling on whether this case and others will be centralized is anticipated shortly thereafter.
 21 (*See* MDL Dkt. # 57.)

22 2. The Parties agree that good cause exists to stay this action to permit the JPML to
 23 decide the pending Motion for Transfer. A stay will ensure that the JPML has an opportunity to hear
 24 and rule upon the Motion and will prevent potentially unnecessary and duplicative proceedings
 25 before this Court. “[A] majority of courts have concluded that it is often appropriate to stay
 26 preliminary pretrial proceedings while a motion to transfer and consolidate is pending with the MDL
 27 Panel because of the judicial resources that are conserved.” *Rivers v. Walt Disney Co.*, 980 F. Supp.

1 1358, 1362 (C.D. Cal. 1997) (granting stay pending MDL transfer decision in part because “any
 2 efforts on behalf of this Court concerning case management will most likely have to be replicated by
 3 the judge that is assigned to handle the consolidated litigation.”). Should the JPML grant the Motion
 4 for Transfer this case likely will be transferred away from this Court and into an MDL proceeding
 5 established elsewhere. Therefore, a stay will conserve both judicial resources and those of the
 6 Parties as well as facilitate the efficient conduct of this action before this Court and as part of any
 7 future MDL proceeding. *See also Calder v. A.O. Smith Corp.*, No. 04-1481 (JRT/AJB), 2004 U.S.
 8 Dist. LEXIS 12083, at *1-2 (D. Minn. June 1, 2004) (granting motion to stay pending MDL Panel’s
 9 transfer decision on grounds that “[d]eference to the MDL court for resolution of these matters
 10 provides the opportunity for the uniformity, consistency, and predictability in litigation that underlies
 11 the multidistrict litigation system”); *U.S. Bank, Nat’l Ass’n v. Royal Indem. Co.*, No. Civ. A 3:02-
 12 CV-0853-P, 2002 WL 31114069, at *2 (N.D. Tex. Sept. 23, 2002) (“by granting the stay, the Court
 13 will avoid the unnecessary waste of judicial resources if the MDL Motion is ultimately granted.”).

14 3. The Parties further agree that a brief stay to permit the JPML to decide the Motion for
 15 Transfer will have no adverse effect on future proceedings in this action, nor will such a stay
 16 prejudice any of the Parties.

17 **Current Status of This Action**

18 4. On July 8, 2016, Plaintiff Dolores Gould filed her Complaint and Demand for Jury
 19 Trial (“Complaint”) against the Johnson & Johnson Defendants (Dkt. #1).

20 5. On July 28, 2016, the Parties filed a joint Stipulation to Extend Time for the Johnson
 21 & Johnson Defendants to respond to the Complaint (Dkt. # 7), extending Defendants’ time to
 22 respond to September 27, 2016.

23 6. The Johnson & Johnson Defendants’ deadline to answer, move, or otherwise respond
 24 to Plaintiff’s Complaint is currently September 27, 2016.

25 7. In addition, the following early case deadlines currently exist: (1) the Parties’ last
 26 day to meet-and-confer regarding ADR process, file ADR Certifications, and file either Stipulation
 27 to ADR Process or Notice of Need for ADR Phone Conference is currently September 28, 2016; (2)

1 an initial Case Management Conference in this matter is set for October 18, 2016; and (3) the
2 attendant Joint CMC Statement is currently due October 11, 2016.

3 **Stipulated Stay**

4 8. For the reasons stated herein, the Parties stipulate to and request a stay of this action
5 for all purposes, including without limitation all responsive pleading, discovery, hearings, and other
6 deadlines, to permit a ruling on the Motion for Transfer currently pending before the Judicial Panel
7 on Multidistrict Litigation, which ruling the Parties expect to receive during the first two weeks of
8 October 2016. The Parties agree that this stay shall remain in full force and effect until lifted by
9 court order upon motion of one or more Parties or as otherwise ordered by this Court or the MDL
10 Court following transfer to an MDL.

11 9. To the extent that this action is not transferred to an MDL by November 18, 2016, the
12 Parties agree to provide the Court with a joint status report on or before that date to apprise the Court
13 of the status of the Motion for Transfer.

14 10. No previous time modification has been requested by the Parties or ordered by the
15 Court in this case. As described above, the Parties stipulated to an extension of the Johnson &
16 Johnson Defendants' deadline for responding to Plaintiff's Complaint, and no other modifications
17 have been sought or agreed to among the Parties. Granting this request will have no adverse effect
18 on future proceedings in this matter.

19 Dated: September 20, 2016

PRATT & ASSOCIATES

20 By: /s/ Ben F. Pierce Gore
21 BEN F. PIERCE GORE

22 Attorneys for PLAINTIFF

1 Dated: September 20, 2016

SHOOK, HARDY & BACON L.L.P.

2 By: /s/ G. Gregg Webb
3 G. GREGG WEBB

4 Attorneys for Defendants
5 JOHNSON & JOHNSON and
6 JOHNSON & JOHNSON CONSUMER
7 INC. formerly known as JOHNSON &
8 JOHNSON CONSUMER
9 COMPANIES, INC.

10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

ORDER

PURSUANT TO STIPULATION, IT IS SO ORDERED.

DATED: September 21, 2016

Haywood S. Gill Jr.

HONORABLE HAYWOOD S. GILLIAM, JR.
UNITED STATES DISTRICT JUDGE

SIGNATURE ATTESTATION

I, G. Gregg Webb, am the ECF User whose ID and password are being used to file this
STIPULATED REQUEST FOR STAY PENDING MDL TRANSFER DECISION;
DECLARATION OF G. GREGG WEBB, AND [PROPOSED] ORDER. In compliance with Local
Rule 5-1(i), I hereby attest that counsel for all parties named have concurred in this filing.

DATED: September 20, 2016

SHOOK, HARDY & BACON, L.L.P.

By: /s/ G. Gregg Webb

G. GREGG WEBB

Attorneys for Defendants
JOHNSON & JOHNSON and
JOHNSON & JOHNSON CONSUMER
INC. formerly known as JOHNSON &
JOHNSON CONSUMER
COMPANIES, INC.

DECLARATION OF G. GREGG WEBB

I, G. Gregg Webb, hereby declare:

1. I am an attorney licensed to practice before all Courts of the State of California and am an attorney with Shook, Hardy & Bacon LLP, counsel of record for Defendants Johnson & Johnson and Johnson & Johnson Consumer Inc., formerly known as Johnson & Johnson Consumer Companies, Inc., (together, the “Johnson & Johnson Defendants,” and collectively with Plaintiff, “the Parties”).

2. On July 15, 2016, plaintiff Tanashiska Lumas, whose case is pending in the Southern District of Illinois, filed a Motion for Transfer before the Judicial Panel on Multidistrict Litigation, requesting creation of an MDL proceeding to centralize eleven talcum powder cases filed in federal court, including this case. (*See In re Johnson & Johnson Talcum Powder Marketing, Sales Practices and Products Liability Litigation*, MDL No. 2738 (MDL Dkt. # 1).) There are presently at least 38 individual actions pending in federal courts across the country in which Plaintiffs allege that perineal use of cosmetic talc products manufactured and marketed by Defendant Johnson & Johnson Consumer Inc. caused them to suffer ovarian cancer.

3. The Johnson & Johnson Defendants did not oppose the creation of an MDL.

4. On August 11, 2016, the JPML set the hearing on the Motion for Transfer for its next Hearing Session on September 29, 2016, in Washington, D.C., and a ruling on whether this case and others will be centralized is anticipated shortly thereafter.

5. On July 8, 2016, Plaintiff Dolores Gould filed her Complaint and Demand for Jury Trial (“Complaint”) against the Johnson & Johnson Defendants (Dkt. #1).

6. On July 28, 2016, the Parties filed a joint Stipulation to Extend Time for the Johnson & Johnson Defendants to respond to the Complaint (Dkt. #7), extending Defendants' time to respond to September 27, 2016.

7. The Johnson & Johnson Defendants' deadline to answer, move, or otherwise respond to Plaintiff's Complaint is currently September 27, 2016.

8. In addition, the following early case deadlines currently exist: (1) the Parties' last day to meet-and-confer regarding ADR process, file ADR Certifications, and file either Stipulation to ADR Process or Notice of Need for ADR Phone Conference is currently September 28, 2016; (2) an initial Case Management Conference in this matter is set for October 18, 2016; and (3) the attendant Joint CMC Statement is currently due October 11, 2016.

9. No previous time modification has been requested by the Parties or ordered by the Court in this case. As described above, the Parties stipulated to an extension of the Johnson & Johnson Defendants' deadline for responding to Plaintiff's Complaint, and no other modifications have been sought or agreed to among the Parties. Granting this request will have no adverse effect on future proceedings in this matter.

I declare under penalty of perjury under the laws of the State of California and of the United States of America that the foregoing is true and correct, and this Declaration is executed on September 20, 2016, in Menlo Park, CA.

/s/ G. Gregg Webb
G. GREGG WEBB